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ABSTRACT

Regulations proposed by the Board of Governors of the California Community Colleges are presented in an attempt to clarify terminology in state legislation regarding: (1) attendance accounting standards to be used in determining state aid to colleges (California Education Code Section 84500) and (2) the "175-Day Rule" (Education Code Section 84370), which requires districts to maintain their colleges at least 175 days each fiscal year. The paper first examines the controversial interpretation of the statutes used by the State Board of Finance in a series of compliance audits and thus demonstrates the need for the Board of Governors to clearly define statutory language dealing with conditions for claiming attendance, the educational activities required of the students, the necessary presence of an instructor, and the inclusion of evening classes in counting school days. Highlights of the resultant clarifying regulations are then outlined, including a legal definition for "immediate supervision and control" of students; guidelines for determining who is legally qualified to provide supervision; and criteria for determining how regular school days are to be counted under the 175-Day Rule. Finally, the text of the proposed regulations is presented, interspersed with interpretive commentary. (JP)

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Attendance Accounting Regulations

Agenda Item 6

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Prepared for a meeting of the
Board of Governors of the
California Community Colleges

Los Angeles, California
June 26-27, 1980

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
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Board of Governors of the
California Community Colleges
June 26-27, 1980

Item 6

Title: Attendance Accounting Regulations

Staff Presentation: Thomas J. Nussbaum, General Counsel
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Summary

This item proposes regulations to address two of the major issues that have arisen from audits of community college districts by the Department of Finance. One issue concerns the basic attendance accounting standard that colleges must adhere to in order to receive state aid (Education Code Section 84500). The other issue involves the so-called "175-Day Rule" (Education Code Section 84370), which requires districts to maintain their colleges at least 175 days each fiscal year.

The item puts these two issues into perspective by briefly tracing the history of other issues that have arisen from audits by the Department of Finance. This history clearly indicates that whenever the Chancellor's Office and the Board of Governors have declined to exercise statutory responsibilities to define and set various standards, the Department of Finance or the Attorney General has stepped in to dictate policy.

Proposed regulations are offered for the two major audit issues under discussion. The regulations are highlighted; and, in addition, a specific explanatory comment follows each proposed regulation change.

These regulations have been reviewed and discussed by the Budget and Finance Committee on two occasions. On May 23, the Committee voted unanimously (3-0) to recommend approval of the regulations by the full Board.

Budget and Finance Committee Recommendation

1. The President of the Board should declare a public hearing on the regulations contained in this item.
2. It is recommended that the Board adopt the proposed regulations on attendance accounting commencing on page 12.

Background

A. Introduction

Nature abhors a vacuum.

Commencing in 1968, the Department of Finance began conducting compliance audits on selected community college districts. Acutely aware of the ever-increasing share of state aid, the Department was concerned with eliminating improprieties in funding and making districts more accountable to the state.

In the years since 1968, the Department has conducted audits on some 38 districts. While the issues or questions raised have generally varied from audit to audit, there is one scenario that has played out time and time again: whenever the Board of Governors has declined to exercise its statutory responsibilities to define and set various standards, the Department of Finance and Attorney General have applied their own concepts, definitions, and philosophy.

Owing to their differing *raison d'etres*, one might expect that the Department of Finance, the Attorney General, and the Board of Governors would take different approaches in setting standards and otherwise interpreting the law. History has vindicated this expectation whenever the Board has engaged in setting of standards on issues related to the audits. All too often, however, interpretations of the Department of Finance or the Attorney General have been greeted with grumbling acquiescence rather than confrontation or constructive amalgamation.

This item addresses two major areas of audit issues that are in need of standards to be set by the Board of Governors. Regulations are proposed to establish standards with respect to the basic attendance accounting requirement and the so-called "175-Day Rule." In both instances the proposed regulations differ substantially from the standards and philosophy that have been propounded and applied by the Department of Finance. On the other hand, some viewpoints of the Department have been incorporated into the proposed standards.

After a brief review of the various issues that have throughout the years been raised by the Department of Finance, this item details the history and controversy surrounding application of the basic attendance requirement and the 175-Day Rule. The proposed regulations are then highlighted and summarized.

B. Major Audit Issues

The major issues which have been raised by Department of Finance audits are discussed below. Also discussed are the Chancellor's staff and Board responses to the Department's contentions, if any. It should be noted that this discussion is not an exhaustive treatment of all audit issues, but rather a capsulized version of the most important problem areas.

1. Basic Attendance Accounting Requirement: Section 84500 of the Education Code provides, in part:

"Except as otherwise provided, in computing the average daily attendance of a community college district, there shall be included only the attendance of students while engaged in educational activities required of such students and under the immediate supervision and control of an employee of the district who possessed a valid certification document, registered as required by law, authorizing him to render service in the capacity and during the period in which he served." (emphasis added)

The Department has interpreted the terminology used in this section in a number of ways. First, it contends that the term "immediate supervision and control" requires actual line-of-sight presence of the instructor in every instance. The instructor cannot move from room to room or lab to lab; rather, he or she must be physically present during the entire time for which attendance is being claimed. Further, the hours of supervision must be assigned as a part of the instructor's workload.

The Department has also contended that in order to be an "employee of the district" the person must be on the payroll of the district and must be paid a real salary (not \$1 per year). Further, the person cannot simply be an instructional assistant or aide who supervises the class under the more general supervision of a certificated employee.

Staff has acknowledged a number of these contentions, but has drawn some critical distinctions. First, staff has noted that the law does not expressly require the actual presence of an instructor in order to qualify for average daily attendance. Instead, the law requires immediate supervision. Rather than requiring actual presence in every instance, staff has argued that the need for immediate supervision and control will vary according to the course being offered, as well as with the design or mode of instruction of such course or program. That is, a shop-type course where dangerous equipment is being operated will require a different degree of immediate supervision than a reading laboratory where self-paced learning materials are predominantly used.

With respect to the Department's contention that an employee of the district must receive a real salary, staff has argued that legally, an employment relationship can exist even though a salary is not paid. Staff has argued that as long as the district has the primary right to control and direct the person's activities, payment of a salary should not be an absolute requirement.

These and other controversies involving the basic attendance accounting requirement were brought to the Board of Governors in the form of regulations in December, 1977. By a single vote (7-3), the Board declined adoption of the regulations.

During 1978, however, the Board did sponsor and achieve passage of a bill providing funding for independent study programs in the community colleges (SB 941, Chapter 1055, Statutes of 1978). The bill, to a large extent, relieved some of the limitations of the immediate supervision and control concept, especially as the concept had been applied to nontraditional delivery methods.

2. Open Courses: Education Code Section 84500.1 provides, in part:

"No community college shall report for attendance.... any classes....if such classes are not located in facilities clearly identified in such a manner, and established by appropriate procedures, to insure that attendance in such classes is open to the general public...." (emphasis added)

The Department has relied upon earlier versions of this statute (Section 5753.1 of the former Code, and Section 78452 of the reorganized Code) to contest ADA generated in classes it believed were "closed." Staff generally agreed with the Department that courses had to be open to the general public, but often disagreed with the Department's application of the concept. The disputes continued until December 1976, when regulations on open courses were adopted by the Board (Title 5, Sections 51820-51826).

3. Sheltered Workshops: Generally speaking, sheltered workshops are settings where a community college offers instruction and/or vocational training to mentally retarded (developmentally disabled) adults. The Department has long contended that community colleges should not be offering courses for the mentally retarded, pointing to 1972 legislation which prohibited new programs for the mentally retarded from being initiated by community colleges on or after May 1, 1973. Staff, on the other hand, has argued that the Education Code does contain authorizations for community colleges to offer programs for the mentally retarded (see, for example, Education Code Sections 78014, 78440 and 78012).

After several audits, extensive debates, and numerous unresolved questions, the Chancellor's Office and the Department agreed to submit a list of questions to the Attorney General. After more than 15 months, the Attorney General responded with a lengthy and complicated opinion which circumscribed the limited instances in which it was permissible for a community college to offer programs for the developmentally disabled.

Eight months later, in April 1978, the Board adopted regulations which clarified the various authorizations to conduct programs for the developmentally disabled. The regulations also clarified the eligibility and limits on funding for such programs. No more than 30 clock hours per week and no more than 4,000 total clock hours (unless there was a waiver by the Chancellor) could be generated by a student in these special classes.

4. 175-Day Rule: Education Code Section 84370 (as amended by Chapter 292, Statutes of 1979) provides in part:

"No community college district...shall, except as otherwise provided in this article, receive its full apportionment from the State School Fund unless it has maintained the regular day schools of the district for at least 175 days during the next preceding fiscal year."

In addition, Education Code Section 76311 provides:

"The minimum school day in any community college, other than an evening community college, is 180 minutes."

The Department has raised a number of important audit issues concerning the 175-Day Rule and the 180 minute minimum day. It has contended that any classes conducted during the evening (after 5:00 p.m.) cannot be counted toward the 180 minute minimum because the statute refers to the regular "day" schools. It has also contended that there must be at least 180 minutes of instruction scheduled on a given day in order for it to count.

The Department has raised questions regarding the level of use of community college facilities and personnel in order for a day to count. That is, citing a 1974 opinion letter of the Attorney General, the Department has contended that the Legislature surely intended something more than a single class going for 180 minutes in order for a day to qualify. The Department has also raised questions regarding the propriety of including days of final examination within the 175 days.

After the long-simmering dispute on these and other issues, the Chancellor's Office and the Department of Finance agreed upon a list of questions to be submitted by the Chancellor to the Attorney General. Some seven months later, in November 1979, the Chancellor decided to withdraw the still unanswered opinion request. The basis of this decision was that the Chancellor's Office and the Board of Governors were given the statutory authority and responsibility to resolve these issues, and that the agency ought not have its policy making constricted or otherwise dictated by an opinion of the Attorney General.

5. Other Major Issues: Other important audit issues which continue to be disputed and in need of Board standards are as follows:

- a. Contract Courses: The law (Education Code Section 84500.1) prohibits ADA from being generated in a class for which the college receives the full compensation for the direct education costs from any public or private agency, individual or group of individuals. If the college receives something less than full compensation (i.e. 99%), it may claim all attendance in the class for ADA purposes.
- b. Intercollegiate Athletics: The major issue in this area is the appropriate limitation on the number of weekly student contact hours which can be claimed for ADA purposes. Since 1963, there has been an unwritten "Gentleman's Agreement" which limits districts to claiming no more than 10 scheduled hours of instruction per week per student. Travel and game time cannot be claimed. In addition, intercollegiate athletic courses are to be considered full term in length, and attendance cannot be counted in more than one term for any single sport.
- c. Work Experience Attendance Accounting: Attendance accounting in work experience courses, as well as for nonregularly scheduled, variable unit courses, is based on one Weekly Student Contact Hour per unit of credit for which a student is enrolled during any census period.

In work experience, as in similarly accounted courses, students are typically entered into the computer at maximum units of credit, regardless of their real intent as to units attempted. The overstatement of ADA is what the Department of Finance finds objectionable.

Attendance accounting standards for this and other problems need to be established for the full gamut of nontraditional instruction.

- d. Variable Credit/Open-Entry/Open-Exit Course Attendance Accounting: The development of modular education exhibited in both variable unit courses and open-entry/open-exit courses provides a prime example of educational delivery system evolution taking place without specific sanction or review by the agency responsible for general oversight of the community colleges; and of the audit problems that arise when a static, archaic student workload measurement system is forced to apply to this evolutionary process.

This brief discussion of major audit issues demonstrates two critical facts. First, the Department of Finance and Attorney General have repeatedly applied their own concepts, definitions, and philosophy in interpreting statutes which the Board of Governors could have and should have interpreted by adopting its own standards. Attorney General opinions have in turn limited the policymaking prerogatives

of the Board when it has subsequently considered standards. Second, until the Board develops standards to address these remaining audit issues, districts will live in uncertainty over what standards will be applied in the event of an audit. Will Department of Finance interpretations prevail, or will they be rebutted in the audit resolution process? Districts can only guess; and their planning efforts must suffer accordingly.

C. Issues for Resolution: The Basic Attendance Accounting Requirement and the 175-Day Rule

Of the issues summarized in the previous section, two have been selected for resolution in this item. The basic attendance requirement and the 175-Day Rule are two issues which relate fundamentally to every community college in the state. To the extent that state aid is not being provided on the basis of a clear and uniform interpretation of the basic attendance accounting requirement, districts will continue to receive differing amounts of state aid, depending upon their own interpretation of the requirement. Districts will also continue to live in uncertainty over which standards may be applied in the event of an audit.

With respect to the 175-Day Rule, districts are caught between the views of the Department of Finance and the Chancellor's staff. If they are audited by the Department, no evening class can be applied towards meeting the 180 minute minimum day. They also remain in doubt as to the number of days of final exams that may be counted. Finally, and most importantly, districts are uncertain as to whether the Department of Finance will deny a day because the level of use of facilities and personnel did not meet some minimum that may only have been established by an Attorney General's opinion or Department of Finance interpretation.

1. Highlights of the Proposed Regulations on the Basic Attendance Accounting Requirement: Within the text of the proposed regulations, comments have been inserted after each section. These comments explain the particular reasons for each change. Prior to reviewing the proposed regulations and comments, however, it is helpful to highlight the major policies addressed in the regulations.

"Immediate supervision and control" has been defined (in Section 54186) to require the "presence" of the certificated employee. The characteristics of presence are then identified. The instructor needs to be able, in terms of physical proximity and range of communication to provide immediate instructional supervision and control; the instructor needs to be in a position to look out for the health and safety of the students; and the instructor needs to have no other assigned duty during the time he or she is teaching. These characteristics are to be applied in recognition of the fact that the need for immediate supervision or presence will vary according to the course being offered, as well as with the design or mode of instruction of the course.

The Department of Finance's view that immediate supervision and control requires line-of-sight presence in every instance has thus been substantially modified. The proposed regulation recognizes the need for some flexibility in the standard of immediate supervision and control, and that in some instances line-of-sight presence may not be necessary. As long as the district designs the supervision and control to meet the characteristics of "presence," the course will be considered to be under the immediate supervision and control of an instructor.

A second major policy addressed by the proposed regulations is the use of instructional aides (Section 54186). It is made clear that attendance generated solely under the supervision and control of an instructional aide does not qualify for apportionment. In conjunction with a certificated employee, however, attendance generated under an instructional aide will qualify for apportionment if the aide functions under the exclusive direction of the certificated employee; if the aide only performs those duties specifically authorized by law; and if the certificated employee remains able, in terms of physical proximity and range of communication, to provide necessary supervision and control of students.

The phrase "employee of the district" is also clarified by the proposed regulations (Section 54188). In order for an employment relationship to exist, the district must have the primary right to control and direct the person's activities; a contract must exist; and the district, if required by law, must pay the person a salary.

The definition of "employee of the district" has been expanded to permit districts to contract with public or private agencies for the provision of instructors. For instance, a college could contract with the Department of Corrections for the Department to provide instructors to teach administration of justice in the college. Under Department of Finance interpretations, the ADA could not be claimed because the instructor was not an employee of the district (the instructor remained on the payroll of the Department of Corrections). The proposed regulations establish a procedure whereby the instructor can qualify as an employee of the district while at the same time remaining on the payroll of the Department of Corrections.

Finally, the proposed regulations establish a procedure that would permit districts to obtain advance determinations on the propriety of claiming ADA under specified circumstances (Sections 54198, 54200, and 54202). Rather than having to remain in uncertainty, or having to face the possible adverse consequences of an audit, a district will have the opportunity to obtain a determination from the Chancellor.

2. Highlights of the Proposed Regulations on the 175-Day Rule:
The 175-Day Rule (Education Code Section 84370) became a major source of controversy after the Department of Finance audited a large multicampus district for fiscal year 1976-77, and found

almost all of the colleges in the district between one and four days short of the required 175. As the law then read, failure to meet the requirement, even by one day, made the district ineligible to receive any apportionment. However, in July 1979, the law was amended, retroactive to 1975-76, to provide a penalty of 2/175ths of a district's apportionment for each day it was short.

As previously mentioned, the Chancellor's Office at one time agreed with the Department of Finance on a list of questions regarding the 175-Day Rule. These questions, most of which came out of the audit mentioned above, were submitted to the Attorney General in March, 1979. In late October, the Deputy Attorney General assigned to the opinion contacted the Chancellor's Office. He noted that while he was still researching the matter, his initial conclusions were leading him to a literal and narrow construction of the law. He also emphasized that the 175-Day Rule (Education Code Section 84370) conferred broad power to the Board of Governors to establish standards to determine whether districts maintained their classes for 175 days. He advised, indirectly, if not directly, that the agency should withdraw the opinion.

After conferring with the deputy on several other occasions, a determination was made to withdraw the opinion request and have the Board develop the appropriate policy through regulations. Legal Counsel then addressed the questions that had been posed to the Attorney General. An opinion was subsequently issued, which provided clarification of the legal parameters restricting or guiding the development of Board policy (see Appendix A).

The Department of Finance, concerned that the 1976-77 audit would not be resolved in time to withhold apportionments, and concerned over the fact that the Chancellor's Office had withdrawn the opinion request, resubmitted an almost identical opinion request to the Attorney General in November of 1979. After conferring with the Department, sharing the opinion of Legal Counsel, and reaffirming the intent to take regulations to the Board of Governors, the Department withdrew its opinion request in January.

Comments following each proposed regulation explain the specific changes made by each provision. The following items should particularly be given careful consideration:

First, the regulations reflect the opinion of Legal Counsel that the term "regular day schools" is a historical term that currently has little or nothing to do with the time of day during which courses are offered (Section 54224). At one time there may have been a neat dichotomy: evening colleges were established to offer adult or noncredit programs, and the regular day colleges offered credit programs. The dichotomy no longer exists in the present day community college. Credit courses are frequently offered during the evening and non-credit courses are frequently offered during the day. Given

this reality, it is an anachronism to insist that once the sun sets (or 5:00 p.m. is reached) the college has suddenly become an evening college.

The second major policy, and probably the most significant of the entire set of regulations, involves the conditions for counting a day (Section 54224). As previously mentioned, the law defines a minimum day as 180 minutes (Education Code Section 76311). At a minimum, therefore, the law requires at least 175 of these 180 minute days. The Department of Finance and the Attorney General have contended, however, that in order for a day to count, the college must be making a reasonable utilization of a substantial part of the resources of the college. It would not suffice to offer a single class which runs for 180 minutes.

Subdivision (a) of proposed Section 54224 attempts to deal with these requirements. Paragraph (1) states the requirement that each day must be at least 180 minutes; paragraph (2) sets forth a "minimum use" or "minimum load" requirement, to insure that the college is making reasonable use of a substantial portion of its resources (facilities and personnel).

The proposed minimum load requirement has been developed after compiling and analyzing data on day-to-day variations in course activity within community college districts. Given the low use of facilities and staff on Fridays, the ever-increasing electrical and gas costs, the spectre of Proposition 9, and the trend towards weekend classes, great care has been taken in proposing the appropriate minimum load requirement.

The third important policy involves the limitation on the number of days of final examinations which may be counted towards the 175-Day Rule. The Department of Finance has questioned whether days of final exams should be counted at all, contending that they are not instructional in nature. The Department and Attorney General have also questioned whether days of final examination could meet their concepts of what an appropriate minimum load or use of facilities might be.

The proposed regulation limits the number of days of finals which may be counted towards meeting the 175-Day Rule to 12 days per academic year. The district, of course, may schedule more than 12 days of finals per year; it cannot, however, count more than 12 of these days towards compliance with the 175-Day Rule. The proposed regulation also exempts days of final examinations from the minimum load requirement specified for the 175-Day Rule generally.

It is appropriate for both fiscal and educational reasons to place some limit on the number of days of final exams which may be counted towards compliance with the 175-Day Rule. With census week attendance accounting procedures, a district would otherwise receive the same amount of state aid regardless of whether it offered one or forty days of final exams per academic year. For example, the census week procedures for fall semesters (17 1/2 weeks) designate the 4th and 11th weeks as census weeks. Based

on the level of activity (weekly student contact hours) during these two weeks, the district receives an apportionment which assumes an identical or near identical level of activity throughout the duration of the semester. Consequently, a district which runs classes for 12 weeks during a semester (and schedules the remaining 5 1/2 weeks for finals) would receive the same apportionment as a district of the same enrollment which chose to run its classes for 16 1/2 weeks and schedule one week for finals. Staff believes that to permit this circumstance will promote inequities in funding among districts.

These inequities could be cured by modifying the census week calculations to exclude final examinations, and then putting such examinations on positive attendance. In this manner, a district which runs 15 weeks of classes would receive 85.7% (15/17.5) of a full semester's apportionment plus whatever positive attendance was generated during the 2 1/2 weeks of final exams.

It is also appropriate for educational reasons to limit the number of days of final exams. Just as the 50% Law (Education Code 84362) protects the emphasis on classroom instruction, limiting the days of finals which count towards the 175-Day Rule will also protect the emphasis on classroom instruction.

D. The Development and Review of the Regulations

Staff developed an initial draft of regulations on these issues early in February, and, after exhaustive internal discussions, mailed a fourth draft (on March 28th and April 1st) to some 500 persons and other interested parties. Written comments were invited, to be received no later than April 30, 1980.

Since the initial draft of the regulations was distributed, staff has also met to review the item with the Superintendents and Presidents, the Chancellor's Advisory Committee, the Deans of Instruction, and the Chief Business Officers.

Early in May, staff reviewed all comments, written and oral, and developed the draft of regulations which were presented to the Budget and Finance Committee on May 23rd.

With respect to written comments, eleven letters were timely received. Six generally complimented the proposed regulations, saying that they were "long needed," "an improvement," "very fair and impartial," and that they were an "improved framework."

Other significant areas of comment were the following: immediate supervision and control (seven comments), use of instructional aides (four comments), and days of final exams (three comments). Several of these comments raised concerns or criticized the regulations on aspects which were really attributable to the Education Code itself rather than a defect in the regulations. The comments following each proposed regulation have been modified so as to make these Education Code limitations more apparent.

The Budget and Finance Committee, which had previously reviewed the regulations as an information item on April 3rd, discussed the regulations and took additional testimony at its meeting of May 23rd. Most

discussion centered around the limitation on the number of days of final examinations which can count towards the 175-Day Rule (Section 54224(b)). The Committee voted unanimously (3-0) to recommend approval of the regulations.

E. Resolution

Be it resolved by the Board of Governors, California Community Colleges, acting under the authority of Sections 66700, 71020, 71025, 72252, 76300, 78008, 78405, 84370, 84500.1, 84520, 84527 and 84530 of the Education Code, and implementing, interpreting and making specific Sections 8512, 72252, 76300, 76301, 76302, 76311, 76320, 78008, 78203, 78206, 78401, 78403, 78404, 78405, 78412, 79000, 79002, 79028, 84370, 84500, 84500.1, 84500.5, 84522, 84527, and 88240-88249 of the Education Code, and pursuant to the Administrative Procedures Act, regulations in Title 5, Part VI of the California Administrative Code are amended, repealed and added as follows:

1. Chapter 3 (commencing with Section 54200) of Division 5, Part VI of Title 5 is repealed.

COMMENT: EXISTING TITLE 5 PROVISIONS RELATED TO ATTENDANCE ACCOUNTING (Sections 54200 - 54222) ARE NOT IN A LOGICAL SEQUENCE. THEY FIRST ADDRESS THE RATHER SPECIFIC SUBJECT OF ATTENDANCE ACCOUNTING FOR DISTRICTS WITH QUARTER SYSTEMS, AND THEN GO ON TO THE MORE GENERAL SUBJECT OF THE 197-DAY RULE. IN ADDITION, THE PROVISIONS RELATED TO QUARTER SYSTEM ARE NO LONGER NECESSARY BECAUSE THEY HAVE ALREADY BEEN INCORPORATED INTO OTHER TITLE 5 PROVISIONS (Sections 54500 - 54510) OR BECAUSE THEY ARE BEING INCORPORATED INTO THE NEW REGULATIONS.

2. Chapter 3 (commencing with Section 54180) is added to Division 5, Part VI of Title 5, to read:

CHAPTER 3. ATTENDANCE
ARTICLE 1. ATTENDANCE GENERALLY

54180. Conditions for Claiming Attendance. (a) All of the following conditions must be met in order for the attendance of students enrolled in a course to qualify for state apportionment:

(1) The course or the program of which it is a part must be approved by the Board of Governors.

(2) Unless expressly exempted by statute, the course must be open to enrollment by the general public, in accordance with Education Code Section 84500.1 and Sections 51820-51826 of this part.

(3) The district may not be receiving full compensation for the direct education costs for the course from any public or private agency, individual or group of individuals.

(4) If the course is an adult education (noncredit) course offered pursuant to Education Code Sections 8530, 8531, 8532 or 8533, a mutual agreement (as defined in Education Code Section 8516) shall be required before attendance in the course may be reported for state apportionment.

(5) The students enrolled in the course must be engaged in educational activities required of such students.

(6) The students must be under the immediate supervision of an employee of the district, unless provided otherwise by law.

(7) The employee of the district must possess a valid certification document which authorizes the employee to render service in the capacity and during the period in which the employee served.

(b) To assist community college districts to conform with the law, the regulations in this article are intended to clarify and interpret attendance accounting terminology used in subsection (a), and in Sections 84500 and 84500.5 of the Education Code.

NOTE: Authority cited: Sections 66700, 71020, 76300, 78405, 84500.1, and 84530, Education Code.

Reference: Sections 8512, 76300, 78203, 78412, 84500, 84500.1, 84500.5, and 84530, Education Code.

COMMENT: THIS SECTION BRINGS TOGETHER INTO ONE PROVISION OF THE VARIOUS EDUCATION CODE REQUIREMENTS REGARDING ELIGIBILITY OF A COURSE FOR AVERAGE DAILY ATTENDANCE. NO NEW REQUIREMENTS ARE IMPOSED BY THIS REGULATION; EXISTING REQUIREMENTS ARE SIMPLY COLLECTED.

54182. Basic Requirement. (a) Subdivision (a) of Section 84500 of the Education Code provides, in part:

"Except as otherwise provided, in computing the average daily attendance of a community college district, there shall be included only the attendance of students while engaged in educational activities required of such students and under the immediate supervision and control of an employee of the district who possessed a valid certification document, registered as required by law, authorizing him to render service in the capacity and during the period in which he served."

(b) The Board of Governors finds that the language quoted in subsection (a) of this Section is the basic attendance accounting requirement for community colleges, and that the language is intended to promote the following purposes:

- (1) To insure the effectiveness of instruction;
- (2) To insure that state aid is apportioned according to the same standards to all districts;
- (3) To insure the safety of students; and
- (4) To insure that the state, community college districts, and students receive a reasonable return for monies expended.

NOTE: Authority cited: Sections 66700, 71020, 76300, and 78405, Education Code.

Reference: Section 84500, Education Code.

COMMENT: THIS PROVISION DECLARES THE BOARD'S FINDING THAT THE QUOTED LANGUAGE IS THE BASIC ATTENDANCE ACCOUNTING REQUIREMENT FOR COMMUNITY COLLEGES. IT ALSO MAKES FINDINGS REGARDING THE PURPOSES WHICH ARE PROMOTED OR SAFEGUARDED BY THE LANGUAGE.

54184. Educational Activities Required of Students. Only the attendance in scheduled and supervised instructional activities required of all students enrolled in a course may be claimed for apportionment purposes. Attendance for learning assistance activities in a course shall be reported for state apportionment only when such activity is required of all students and is offered during scheduled class hours; or, when learning assistance is offered as another course meeting standards for apportionment. If attendance is to be claimed for a course in which students are engaged in varying activities that have no commonality as a course, the course must be conducted as independent study.

NOTE: Authority cited: Sections 66700, 71020, 76300, and 78405, Education Code.
Reference: Sections 76300, 78405, and 84500, Education Code.

COMMENT: THIS PROVISION INTERPRETS ONE PHRASE OF THE BASIC ATTENDANCE ACCOUNTING REQUIREMENTS CONTAINED IN SUBDIVISION (a) OF SECTION 84500 OF THE EDUCATION CODE. IT CLARIFIES THE ADA ELIGIBILITY OF LEARNING ASSISTANCE ACTIVITIES SUCH AS LEARNING RESOURCE CENTERS OR HOMEWORK. ALL STUDENTS ENGAGED IN LEARNING ASSISTANCE ACTIVITIES MUST BE ENGAGED, DURING SCHEDULED CLASS HOURS, IN ACTIVITIES REQUIRED OF ALL STUDENTS. IF ADA IS TO BE CLAIMED FOR A CLASS IN WHICH THE STUDENTS ARE ENGAGED IN VARYING ACTIVITIES THAT HAVE NO COMMONALITY AS A COURSE, THE CLASS MUST BE CONDUCTED AS INDEPENDENT STUDY.

54186. Immediate Supervision and Control. (a) Subdivision (a)(1) of Section 84500 of the Education Code requires, as a condition for claiming attendance for apportionment purposes, the immediate supervision and control of an appropriately certificated employee. Immediate supervision and control requires the presence of the certificated employee. More specifically, immediate supervision or presence is characterized by all of the following:

(1) The certificated employee is able, in terms of physical proximity and range of communication, to provide immediate instructional supervision and control; and

(2) The certificated employee is in a position to provide the supervision and control necessary for the protection of the health and safety of students; and

(3) The certificated employee is not to have any other assigned duty during the instructional activity for which attendance is being claimed.

The criteria specified above are to be applied in recognition of the fact that the need for immediate supervision will vary according to the course being offered, as well as with the design or mode of instruction of such course or program.

(b) Under the following limited circumstances, attendance of students enrolled in a course or program which does not meet the requirements of subdivision (a) shall qualify for apportionment purposes if:

(1) The course or program is approved and being conducted as independent study (see Section 54192) in accordance with Chapter 4 (commencing with Section 55300) of Division 6 of this part; or

(2) The course or program is approved and being conducted as work experience education (see Section 54194) in accordance with Chapter 3 (commencing with Section 55250) of Division 6 of this part; or

(3) The course or program is approved and is being conducted as health sciences education (see Section 54196) in accordance with Section 84500.5 of the Education Code.

(c) Attendance generated solely under an instructional assistant or aide does not qualify for apportionment. In addition, instructional aides shall not be used to increase the number of students in relation to the number of classroom teachers in the district. However, attendance may qualify for apportionment under the following limited circumstances:

(1) The assistant or aide functions under the exclusive direction of the certificated employee assigned to that educational activity, and not independently; and,

(2) The assistant or aide performs only those duties specifically authorized by law, including, but not limited to, Sections 88240-88249 of the Education Code; and,

(3) The certificated employee is able, in terms of physical proximity and range of communication, to provide necessary supervision and control of students, so that by working in conjunction with the assistant or aide, the requirements of subsection (a) of this Section are met.

NOTE: Authority cited: Sections 66700, 71020, 76300, and 78405, Education Code.

Reference: Sections 76300, 78405, 84500, 84500.5, 84520, 84530, and 88240-88249, Education Code.

COMMENT: THIS PROVISION INTERPRETS ONE PHRASE OF THE BASIC ATTENDANCE ACCOUNTING REQUIREMENT CONTAINED IN SUBDIVISION (a) OF SECTION 84500 OF THE EDUCATION CODE. SUBSECTION (a) OF THIS PROPOSED REGULATION WOULD CLARIFY THAT IMMEDIATE SUPERVISION REQUIRES THE PRESENCE OF THE INSTRUCTOR; IT THEN CLARIFIES THE CHARACTERISTICS OF PRESENCE. SUBSECTION (b) COLLECTS THE VARIOUS STATUTORY EXCEPTIONS OR REFINEMENTS TO THE GENERAL REQUIREMENT OF IMMEDIATE SUPERVISION AND CONTROL.

SUBSECTION (c) OF THE PROPOSED REGULATION CLARIFIES THE GENERAL STATUTORY PROHIBITION ON THE USE OF INSTRUCTIONAL AIDES, IN LIEU OF THE CERTIFICATED INSTRUCTOR, FOR PURPOSES OF GENERATING ADA (SEE EDUCATION CODE SECTIONS 88240 - 88249). THE SECOND SENTENCE OF THE SUBSECTION, RELATING TO THE RATIO OF STUDENTS TO TEACHERS, IS TAKEN ALMOST VERBATIM FROM SECTION 88242 OF THE EDUCATION CODE. IT SETS FORTH THE LIMITED CIRCUMSTANCES THAT ATTENDANCE UNDER THE SUPERVISION AND CONTROL OF AN INSTRUCTIONAL AIDE QUALIFIES FOR APPORTIONMENT.

54188. Employee of the District. (a) A person is an "employee of the district" within the meaning of subdivision (a)(1) of Section 84500 of the Education Code if:

(1) The district has the primary right to control and direct the person's activities during the time such person is serving the district; and,

(2) A contract exists between the person and the district, indicia of which may include provisions which specify the terms and conditions of work, salary and other compensation, work to be performed, and employment classification; and,

(3) The district compensates the person according to an adopted salary or wage schedule which complies with the provisions of Article 6 (commencing with Section 87800) Chapter 3, Part 51 of the Education Code.

(b) For the purposes of complying with the requirements of this section, a district may also contract for instruction to be provided by a public or private agency. Such contracts shall specify that the district has the primary right to control and direct the activities of the person or persons furnished by the public or private agency during the term of the contract. In addition, the district shall enter into a written contract with each person furnished by the public or private agency; and said contracts shall meet the requirements of subsection (a)(1) and (2) of this section. In this manner an individual employed will continue to be an employee of a public or private agency, while at the same time qualifying as an employee of the district.

NOTE: Authority cited: Sections 66700, 71020, 76300, and 78405, Education Code.

Reference: Sections 76300, 78405, and 84500, Education Code.

COMMENT: THIS PROVISION INTERPRETS ONE PHRASE OF THE BASIC ATTENDANCE ACCOUNTING REQUIREMENT CONTAINED IN SECTION 84500 OF THE EDUCATION CODE. SUBSECTION (a) STATES THE CONDITIONS THAT MUST BE MET IN ORDER FOR AN EMPLOYMENT RELATIONSHIP TO EXIST: THE DISTRICT MUST HAVE THE PRIMARY RIGHT TO CONTROL AND DIRECT A PERSON'S ACTIVITIES; THERE MUST BE A CONTRACT; AND THE DISTRICT MUST PAY THE PERSON A SALARY, IF A SALARY IS REQUIRED BY LAW.

SUBSECTION (b) ADDRESSES THE SITUATION IN WHICH AN INSTRUCTOR IS BEING FURNISHED (SOMETIMES WITHOUT CHARGE) BY AN OUTSIDE PUBLIC OR PRIVATE AGENCY (FOR INSTANCE, WHEN THE STATE DEPARTMENT OF CORRECTIONS HAS ONE OF ITS EMPLOYEES INSTRUCT A COMMUNITY COLLEGE CLASS IN ADMINISTRATION OF JUSTICE). THE DEPARTMENT OF FINANCE HAS MAINTAINED THAT AS LONG AS THE DISTRICT DOES NOT PAY THE PERSON'S SALARY (A REAL SALARY), AND THAT AS LONG AS THE PERSON HAS NO CONTRACT WITH THE DISTRICT, THAT THE PERSON CANNOT BE CONSIDERED AN EMPLOYEE OF THE DISTRICT. SUBSECTION (b) REFLECTS STAFF'S POSITION ON THE USE OF EMPLOYEES OF OTHER AGENCIES. AS LONG AS THE OUTSIDE AGENCY, THE PERSON, AND THE DISTRICT AGREE THAT THE DISTRICT HAS THE PRIMARY RIGHT TO CONTROL AND DIRECT THE PERSON WHEN HE OR SHE IS PROVIDING INSTRUCTION; AND AS LONG AS THERE IS A CONTRACT BETWEEN THE PERSON AND THE DISTRICT; IT IS NOT REQUIRED THAT THE DISTRICT PAY A SALARY TO THE PERSON.

54190. Valid Certification Document. For the purposes of Section 84500 of the Education Code, a certification document must meet the following requirements relative to the activity for which attendance is being claimed:

(a) It must authorize the holder to provide instruction in the particular subject matter or matters; and

(b) It must authorize the holder to provide that instruction during the period in which the holder is providing it.

NOTE: Authority cited: Sections 66700, 71020, 76300, and 78405, Education Code.

Reference: Sections 76300, 78405, and 84500, Education Code.

COMMENT: THIS PROVISION INTERPRETS ONE PHRASE OF THE BASIC ATTENDANCE ACCOUNTING REQUIREMENT CONTAINED IN SECTION 84500 OF THE EDUCATION CODE. THE CERTIFICATION DOCUMENT (CREDENTIAL) MUST AUTHORIZE THE HOLDER TO PROVIDE INSTRUCTION IN THE SUBJECT MATTER HE OR SHE IS TEACHING, AND IT MUST BE VALID AT THE TIME HE OR SHE IS INSTRUCTING.

54192. Independent Study. For the purpose of approved independent study courses or programs, a district may include the attendance of students who are under the supervision, control, and evaluation, but not necessarily in the immediate presence, of an employee of the district who possesses a valid certification document. Such attendance may be included only under the conditions specified in Section 84500(a)(2) of the Education Code, as implemented by Chapter 4 (commencing with Section 55300) of Division 6 of this part.

NOTE: Authority cited: Sections 66700, 71020, 76300, 79405, and 84500, Education Code.

Reference: Sections 76300, and 84500, Education Code.

COMMENT: THIS SECTION SIMPLY NOTES THE EXISTING STATUTORY AUTHORIZATION TO INCLUDE THE ATTENDANCE OF STUDENTS IN INDEPENDENT STUDY PROGRAMS OR COURSES (WHICH ARE NOT GENERALLY UNDER THE IMMEDIATE SUPERVISION AND CONTROL OF A DISTRICT EMPLOYEE).

54194. Work Experience: Immediate Supervision. For the purpose of approved work experience education programs, "immediate supervision" of off-campus work training stations means student participation in on-the-job training as outlined under a training agreement, wherein the employer and certificated school personnel share the responsibility for on-the-job supervision.

NOTE: Authority cited: Sections 66700, 71020, 76300, and 78405, Education Code.

Reference: Sections 76300 and 84500, Education Code.

COMMENT: THIS SECTION SIMPLY NOTES THE EXISTING STATUTORY AUTHORIZATION TO INCLUDE THE ATTENDANCE OF STUDENTS ENGAGED IN WORK EXPERIENCE PROGRAMS (WHICH ARE NOT GENERALLY UNDER THE EXCLUSIVE IMMEDIATE SUPERVISION AND CONTROL OF A DISTRICT EMPLOYEE).

54196. Health Sciences Education. For the purposes of approved health sciences education programs in community colleges, "immediate supervision" means student participation in such programs wherein the person to whom the student is required to report for training, counseling, or other prescribed activity shares the responsibility for the supervision of the students in clinical activities with certificated personnel of the district. Whenever the person to whom the student is required to report is not a certificated district employee, the person shall possess a valid certificate or license to practice a healing art in California.

NOTE: Authority cited: Sections 66700, 71020, 76300, and 78405, Education Code.

Reference: Sections 76300 and 84500.5, Education Code.

COMMENT: THIS SECTION SIMPLY NOTES THE EXISTING STATUTORY AUTHORIZATION TO INCLUDE THE ATTENDANCE OF STUDENTS ENGAGED IN HEALTH SCIENCES EDUCATION PROGRAMS (WHICH ARE NOT GENERALLY UNDER THE EXCLUSIVE IMMEDIATE SUPERVISION AND CONTROL OF A DISTRICT EMPLOYEE).

54198. Application for Chancellor's Determination. If a community college district is uncertain as to whether the conditions of attendance in an educational program or course, proposed or existing, meet the conditions for claiming attendance which are contained in the Education Code and interpreted in this article, the chief administrative officer of the district may apply to the Chancellor for a determination as to whether such attendance may be claimed for apportionment. The application shall be made on a form provided by the Chancellor, which shall require such information to be provided as deemed necessary by the Chancellor.

NOTE: Authority cited: Sections 66700, 71020, 76300, and 78405, Education Code.
Reference: Sections 71023, 76300, 84500, 84500.1, and 84500.5, Education Code.

COMMENT: THIS SECTION, ALONG WITH SECTIONS 54200 and 54202, WOULD ESTABLISH A PROCEDURE FOR DISTRICTS TO OBTAIN ADVANCE DETERMINATIONS AS TO THE LEGALITY OF CLAIMING ADA UNDER PARTICULAR CIRCUMSTANCES. RATHER THAN REMAINING IN DOUBT AND WAITING FOR AN AUDIT, THESE PROVISIONS WOULD PERMIT DISTRICTS TO OBTAIN DETERMINATIONS REGARDING EXISTING OR PROPOSED CONDITIONS OF ATTENDANCE.

DISTRICTS WOULD BE PERIODICALLY NOTIFIED OF DETERMINATIONS MADE BY THE CHANCELLOR, THEREBY PERMITTING THEM TO SHARE IN THE INTERPRETATIONS MADE FOR OTHER DISTRICTS.

54200. Determination. The Chancellor shall, within ninety days following receipt of a proper application, transmit to the district a written response as to the legality of claiming attendance under the circumstances described in the application. The response shall be developed according to the following procedures and guidelines:

(a) Review by the Chancellor shall be accomplished by applying the standards prescribed in this article, as well as applicable Education Code provisions, to the specific circumstances of the case as described in the district's application.

(b) One of the following responses shall be transmitted to the district by the Chancellor:

(1) Attendance in the program or course may be counted for purposes of apportionment;

(2) Attendance in the program or course may not be counted for purposes of apportionment, accompanied by an explanation of why this conclusion was reached;

(3) The application does not contain sufficient information upon which a decision can be made, with an indication of what additional information is needed.

(c) Approval to count attendance in a program or course reviewed pursuant to this article shall be valid until the course or program is changed in any material way.

NOTE: Authority cited: Sections 66700, 71020, 76300, and 78405, Education Code.

Reference: Sections 66700, 71023, 76300, 84500, 84500.1, and 84500.5, Education Code.

COMMENT: SEE COMMENT ON SECTION 54198.

54202. Notification to Other Districts. The Chancellor shall retain a copy of all responses transmitted to districts and shall periodically notify all districts of such responses as are deemed of interest. Any district, upon written request to the Chancellor, may obtain a copy of any response made to another district.

NOTE: Authority cited: Sections 66700, 71020, 76300, and 78405, Education Code.

Reference: Sections 66700, 71023, 76300, 84500, 84500.1, and 84500.5, Education Code.

COMMENT: See comment on Section 54198.

ARTICLE 2. STANDARDS FOR COMPLIANCE
WITH 175 DAYS OF ATTENDANCE

54220. Purpose. The purpose of this article is to implement Section 84370 of the Education Code, and to establish standards to determine whether community college districts have maintained the regular day schools of the district for at least 175 days during the immediately preceding fiscal year.

NOTE: Authority cited: Sections 66700, 71020, 72252, 76300, 78008, 78405, and 84370, Education Code.

COMMENT: THIS PROVISION SIMPLY STATES THE PURPOSE OF THE ARTICLE IS TO IMPLEMENT EDUCATION CODE SECTION 84370 (the "175-Day Rule"). AS AMENDED IN 1979, SECTION 84370 PROVIDES:

84370. (a) NO COMMUNITY COLLEGE DISTRICT, OTHER THAN ONE NEWLY FORMED, SHALL, EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, RECEIVE ITS FULL APPORTIONMENT FROM THE STATE SCHOOL FUND UNLESS IT HAS MAINTAINED THE REGULAR DAY SCHOOLS OF THE DISTRICT FOR AT LEAST 175 DAYS DURING THE NEXT PRECEDING FISCAL YEAR.

(b) FOR THE PURPOSES OF THIS ARTICLE, THE BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES SHALL ESTABLISH STANDARDS TO DETERMINE WHETHER THE DISTRICTS WITHIN ITS JURISDICTION HAVE MAINTAINED THE REGULAR DAY SCHOOLS OF THE DISTRICT FOR AT LEAST 175 DAYS DURING THE NEXT PRECEDING FISCAL YEAR.

(c) IF A COMMUNITY COLLEGE DISTRICT FAILS TO MAINTAIN ITS SCHOOLS FOR THE REQUIRED 175 DAYS, THE BOARD OF GOVERNORS SHALL WITHHOLD FROM THAT DISTRICT'S APPORTIONMENT THE PRODUCE OF 0.01143 TIMES THE DISTRICT'S APPORTIONMENT FOR EACH ADDITIONAL DAY THE DISTRICT WOULD HAVE HAD TO MAINTAIN ITS SCHOOLS IN ORDER TO MEET THE REQUIREMENT PRESCRIBED BY THIS SECTION. THIS SUBDIVISION SHALL APPLY RETROACTIVELY TO FISCAL YEAR 1975-76 AND EACH FISCAL

54222. Regular Day Schools. The Board of Governors finds that the term "regular day schools" is a historical term that has no current relation to the time of day during which classes are offered.

(a) "Regular day schools" of a community college district shall include all programs and courses of instruction offered by the college(s) within a district; except that those courses and programs which are offered through or by an "evening" or "adult" school or college which has been established by the governing board pursuant to Education Code Sections 72012 and 78401 shall not be part of the regular day schools.

(b) If there has been no district action pursuant to Education Code Sections 72012 and 78401 to establish an adult or evening school, all offerings, whether credit or noncredit, shall be construed as part of the regular day schools of the district, regardless of when offered.

(c) All references in this article to "courses", "course offerings", "minutes of instruction" or "minutes of examination" shall apply to regular day school activities only.

NOTE: Authority cited: Sections 66700, 71020, 72252, 76300, 78008, 78405, and 84370, Education Code.

Reference: Sections 76301, 76302, 76311, 76320, 78008, 78206, 78401, 78403, 78404, 78405, 79000, 79028, and 84370, Education Code.

COMMENT: THIS PROVISION SETS FORTH THE STAFF'S INTERPRETATION OF WHAT IS MEANT BY "REGULAR DAY SCHOOLS." THE DEPARTMENT OF FINANCE HAS MAINTAINED THAT CLASSES CONDUCTED AFTER 5 P.M. ARE EVENING CLASSES, AND AS SUCH CANNOT BE COUNTED TOWARDS REACHING THE 180 MINUTE MINIMUM DAY SPECIFIED IN EDUCATION CODE SECTION 76311. STAFF IS OF THE OPINION THAT "REGULAR DAY SCHOOLS" AND "EVENING SCHOOLS" ARE HISTORICAL TERMS THAT ORIGINALLY RELATED TO THE TYPE OF INSTRUCTION. THAT IS, ADULT OR NONCREDIT CLASSES WERE OFFERED IN THE EVENING AND WERE THUS PART OF AN EVENING SCHOOL; CREDIT INSTRUCTION WAS OFFERED DURING THE DAY, AND WAS THUS A PART OF THE REGULAR DAY SCHOOLS. WITH TIME, DISTRICTS BEGAN OFFERING CREDIT FOR COURSES CONDUCTED IN THE EVENING; AND NONCREDIT OFFERINGS WERE OFFERED DURING THE DAY. SINCE BOTH CREDIT AND NONCREDIT INSTRUCTION ARE CLEARLY WITHIN THE COMPREHENSIVE MISSION OF COMMUNITY COLLEGES IT MAKES NO SENSE TO CONTINUE TO DISTINGUISH BETWEEN DAY AND EVENING COLLEGES. UNLESS A DISTRICT GOVERNING BOARD HAS TAKEN SEPARATE ACTION TO ESTABLISH A SEPARATE EVENING COLLEGE, ALL OFFERINGS SHOULD BE CONSTRUED AS PART OF THE "REGULAR DAY SCHOOLS."

54224. Conditions for Inclusion as a Day. (a) For a day to count towards meeting the requirements of Education Code Section 84370, it must meet the following standards

(1) The day must consist of at least 180 minutes of instruction or evaluation. Specifically, students must be engaged in educational activities required of such students and must be under the immediate supervision and control of appropriately certificated employees of the district.

(2) The total hours of course offerings scheduled during the day must be at least fifty percent (50%) of the average daily hours of course offerings for the academic year. The average daily hours of course offerings shall be computed by totaling the hours of courses scheduled (including noncredit courses which are not part of a separately established evening program) during each of the census weeks of each semester or quarter of the academic year, and dividing by the total number of days included in the census weeks for the academic year.

(b) Notwithstanding subsection (a) of this section, days of final examination may be counted toward meeting the requirements of Education Code Section 84370, provided that:

(1) At least 180 minutes of examinations for regular day school classes are scheduled; and

(2) Such examinations are administered under the immediate supervision and control of an appropriately certificated employee of the district; and

(3) Not more than twelve days of final examinations shall be counted for any academic year, as defined by the district.

(c) Registration and commencement activities shall not be included as part of the 180 minutes of the minimum day requirement.

(d) Saturdays, Sundays, and legal holidays shall not be counted, except as provided in Education Code Section 79028.

(e) Days of summer intersession or summer session shall not be counted.

NOTE: Authority cited: Sections 66700, 71020, 72252, 76300, 78008, 78405, and 84370, Education Code.

Reference: Sections 76301, 76302, 76311, 76320, 78008, 78206, 79000, 79028, and 84370, Education Code.

COMMENT: THIS SECTION SETS FORTH THE CONDITIONS FOR A DAY TO COUNT TOWARD MEETING THE 175-DAY RULE. SUBSECTION (a) RESTATES THE REQUIREMENT OF EDUCATION CODE SECTION 76311 THAT THERE BE AT LEAST 180 MINUTES OF INSTRUCTION OR EVALUATION IN A DAY.

SUBSECTION (a) ALSO ESTABLISHES A "MINIMUM LOAD" REQUIREMENT, WHICH IS INTENDED TO RESPOND TO AN OPINION OF THE ATTORNEY GENERAL AS WELL AS CONTENTIONS BY THE DEPARTMENT OF FINANCE. THE ATTORNEY GENERAL DETERMINED THAT IN ORDER FOR A DAY TO COUNT TOWARDS THE 175-DAY RULE, A DISTRICT HAD TO BE "MAKING A REASONABLE UTILIZATION OF A SUBSTANTIAL PART OF THE RESOURCES OF THE COLLEGE IN THE TEACHING OF STUDENTS" (Opinion Letter to Verne Orr, Director of Finance, December 6, 1974). THE ATTORNEY GENERAL DETERMINED THAT ABSENT STANDARDS OF THE BOARD OF GOVERNORS, A DAY COULD NOT BE COUNTED "WHERE A SIGNIFICANT NUMBER OF THE REGULAR FULL-TIME STUDENT ENROLLMENT AND CONCOMITANT FACULTY DO NOT PARTICIPATE IN THE 'TEACHING' OF COURSES OF INSTRUCTION."

THE MINIMUM LOAD REQUIREMENT HAS BEEN CONSTRUCTED SO AS TO PERMIT A DISTRICT TO INCLUDE SATURDAY OR SUNDAY COURSE ACTIVITY IN DETERMINING ITS AVERAGE DAILY HOURS OF COURSE OFFERINGS. SECTION 84520 OF THE EDUCATION CODE SPECIFIES THAT CENSUS WEEKS CONSIST OF FIVE OR SIX CONSECUTIVE DAYS OF REGULARLY SCHEDULED CLASSES. THUS, FOR EXAMPLE, A DISTRICT ON THE SEMESTER SYSTEM (WHICH HAS FOUR CENSUS WEEKS DURING THE ACADEMIC YEAR) WOULD ADD TOGETHER THE COURSE ACTIVITY SCHEDULED DURING THESE CENSUS WEEKS AND DIVIDE BY 20 OR 24 (DEPENDING ON WHETHER THE DISTRICT'S CENSUS WEEK IS FIVE OR SIX DAYS). FOR A QUARTER SYSTEM, A DISTRICT WOULD BE DIVIDING BY 30 OR 36, DEPENDING ON WHETHER ITS CENSUS WEEKS WERE FIVE OR SIX DAYS.

SUBSECTION (b) OF THE PROPOSED REGULATION WOULD ALLOW A DISTRICT TO COUNT UP TO 12 DAYS (OF THE REQUIRED 175) FOR FINAL EXAMINATIONS. THESE 12 DAYS NEED NOT MEET THE "MINIMUM LOAD" REQUIREMENT SPECIFIED IN SUBSECTION (a)(2). THE 12 DAY MAXIMUM WAS ESTABLISHED BY STANDARDS OF THE CHANCELLOR'S OFFICE ISSUED IN DECEMBER 1979.

SUBSECTION (c) OF THE PROPOSED REGULATION CLARIFIES THAT REGISTRATION AND COMMENCEMENT ACTIVITIES DON'T QUALIFY FOR THE 180 MINUTES REQUIRED TO COUNT A DAY. THIS IS CONSISTENT WITH FINDINGS OF THE ATTORNEY GENERAL AND PAST STAFF INTERPRETATION.

SUBSECTION (d) OF THE PROPOSED REGULATION SIMPLY STATES THE EDUCATION CODE PROHIBITION ON COUNTING DAYS OF CLASSES ON SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS TOWARDS THE 175-DAY RULE.

SUBSECTION (e) OF THE PROPOSED REGULATION SIMPLY REFLECTS THE PROHIBITION ON COUNTING SUMMER INTERSESSION DAYS OR SUMMER SESSION DAYS TOWARD THE 175-DAY RULE (SEE EDUCATION CODE SECTION 78008).

54226. Definition of Sessions. (a) The 175 days shall be divided into sessions as described in Education Code Sections 72252, 79008, 78200 and 78206, and Administrative Code, Title 5, Section 55201 and such other sessions that may be combined with the semester or quarter sessions to total 175 days, so long as each day meets the requirements of Section 54224 of this article.

(b) Prior to any change in sessions, including the addition, deletion, shortening or lengthening of any session, the governing board of a district shall notify and obtain the approval of the Chancellor.

NOTE: Authority cited: Sections 66700, 71020, 72252, 76300, 78008, 78405, and 84370, Education Code.

Reference: Sections 72252, 78008, 78206, 79000, 84370, and 84520, Education Code.

COMMENT: SUBSECTION (a) OF THE PROPOSED REGULATION CLARIFIES THAT ANY DAY WHICH MEETS THE REQUIREMENTS OF PROPOSED SECTION 54224 CAN COUNT TOWARDS THE 175 DAYS, REGARDLESS OF WHETHER THAT DAY IS A PART OF A SEMESTER, QUARTER, TRIMESTER, INTERSESSION, OR OTHER SESSION. SUBSECTION (b) SIMPLY RESTATES WHAT IS CURRENTLY REQUIRED WHEN A DISTRICT WISHES TO CHANGES ITS ACADEMIC CALENDAR.

54228. Withholding of Apportionment. If a community college district fails to meet the requirements of Section 54224 for the required 175 days, the Board of Governors shall withhold from that district's apportionment the product of 0.01143 times the district's apportionment for each additional day the district would have had to maintain its schools in order to meet the required 175 days. This subdivision shall apply retroactively to fiscal year 1975-76 and each fiscal year thereafter.

NOTE: Authority cited: Sections 66700, 71020, and 84370, Education Code.
Reference: Section 84370, Education Code.

COMMENT: LEGISLATION IN 1979 (CHAPTER 292, STATUTES OF 1979) REVISED EDUCATION CODE SECTION 84370 WITH RESPECT TO THE PENALTY FOR NONCOMPLIANCE WITH THE 175-DAY RULE. RATHER THAN TOTAL LOSS OF APPORTIONMENTS, THE DISTRICT WILL LOSE 2/175ths (.01143) OF ITS APPORTIONMENT FOR EACH DAY IT IS SHORT.

Be it further resolved that these revisions to Title 5 regulations mandate no new or additional costs to local, state, or federal agencies, within the meaning of Revenue and Taxation Code, Section 2231.

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